



## **Why good companies misbehave and (occasionally) break the competition rules**

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# Why good companies misbehave and (occasionally) break the competition rules

23. september 2014



# Why do companies break the law?



The answer emerging from enforcers and the public is that they gang up against the free market deliberately, consciously and with a malicious intent

# Impact on compliance

- Most companies adopt a compliance approach centered on avoiding careless conversations, comments or participation in (secret) meetings with no legitimate or clear purpose



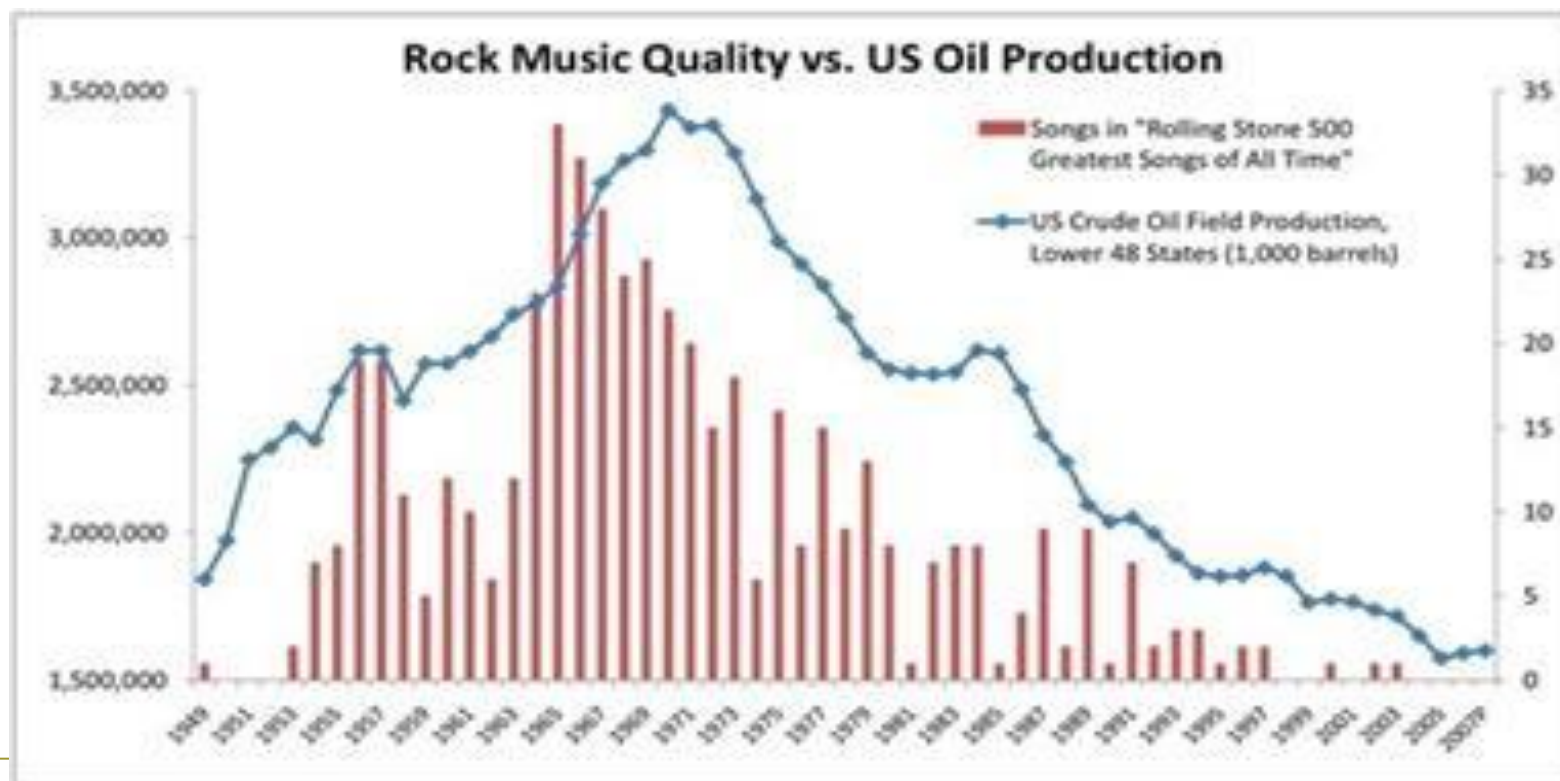
## Impact on compliance

- Why you might have heard lawyers recommend a strong and clear reaction if confronted with any such attempts, e.g. suspicious invitations, in order to avoid misunderstandings, or that you should “NEVER EVER....”



## Impact on compliance

- A prudent approach. A meeting followed by parallel behavior does look suspicious



# "Veterinary cartel"

## Summary of meeting between veterinarians held on 6 May 2008

Byggestru Dyrehospital - Referat af møde for dyrlæger  
Åbnet den 6. maj 2008

### Diskussioner:

Arbejdsresultater pr. år

#### "Shoppingpriser"

- Det skal ikke være værd at køre efter disse ydelser
- Sættes som laveste takst
- Er ydelserne ens?
- Ekstra ydelser skal takseres ekstra
- Opdeling honorar/medicin/materialer

Medicinske vs. zoonotiske patienter, hvordan opmer vi betaling for den tid vi bruger på at se på hunden?

- ✓ Medicinske værktøjer, bl.a. antibiotika/klinikpakninger
- ✓ Pristaktiling generelt: lønninger og inflation
- ✓ Lønsagtskab, lønsagtskab starter vagter fra kl. 17.00 og eftermiddag pr. 1. juli.

### Afslutning:

Priser pr. 1. juli 2008: kr. 198,-

Kastration og sterilisation følger point med hidtidige satser:

Kat:	
Kastration	4,32
Sterilisation	6,8
Hund:	
Kastration	7,37
Sterilisation	14,78

Priserne for katte fortsat inkl. ommærkning men evt. registrering

Reguleringer (volds mod værktøj indtil 1. juli 2009)

Referent: Helge Jørgensen

### "Shoppingpriser"

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## However, reality differs

- The “management cartel” established and operated by senior management (that other accidentally could join) is rare and predominantly observable in books, presentations and films





## However, reality differs

- Out of 1111 Danish cases decided (and published) by the Danish Competition and Consumer Authority (1998-2014), 159 could be labeled as cartels (an agreement between competitors restricting competition)
- However, 65 cases were closed by exceptions, commitments or informal adjustments reducing the number of “serious” cartels to 94



## However, reality differs

- Further, in 46 of these cases, the parties could provide a reasonable explanation mitigating the decision:
  - a) The association of veterinarians had restricted customer shopping following sickness or death of a colleague (2014)
  - b) The Danish Association of Undertakers had adopted a ban on TV advertisements (2010)
  - c) Association of Retailers had adopted a 13 point agenda to reduce the sale of enriched candy (2007)
- Hence, this is an infringement, but not an evil conspiracy, against the free market



## However, reality differs

- Remaining is therefore 48 hardcore cartels (of which 36 predate 2000) where no mitigating or clear indications that the parties were pursuing legitimate (or somewhat legitimate) interests could be found



## Hence, no one intended the infringement

- The perception is that cartelists willingly enter into cartels
- In reality, most parties never intended any infringement as the (real) hardcore cartels account for less 1/3 of the observable cartels (1998-2014)



## Hence, no one intended the infringement

- Rather than focusing on the intended cartels, it is the unintended cartels nobody intended to establish that should worry compliance officers



# Many ways to Golgata

- Many ways to end up in a cartel infringement:
  - a) Restrictive contract clauses infringing competition law. Best addressed by legal department or external attorney review of contract prior to conclusions



## Many ways to Golgata

- Many ways to end up in a cartel infringement:
  - b) Group associated companies (subsidiaries) enter into a cartel (intentionally or unintentionally). Look for plus factors, e.g. exchange of employee, sudden increase of profitability or an (bad) incentive scheme



## Many ways to Golgata

- Many ways to end up in a cartel infringement:
  - a) Careless comments that could be misunderstood and indicate unwanted interests and opinions





# Hollywoodwise

FROM THE DIRECTOR OF OCEAN'S 11, 12 AND 13  
**MATT DAMON**



**BASED  
ON A  
TATTLE-TALE**

THE FILM 'THE INFORMANT' IS BASED ON THE BOOK BY MATTHEW J. ROBERTS, A FORMER INVESTIGATIVE JOURNALIST AND A FORMER SOURCE OF THE FBI. THE FILM IS A COMEDY-THRILLER THAT TALKS ABOUT THE LIFE OF A MAN WHO BETRAYS HIS BOSS AND BECOMES A SOURCE FOR THE FBI. THE FILM IS A COMEDY-THRILLER THAT TALKS ABOUT THE LIFE OF A MAN WHO BETRAYS HIS BOSS AND BECOMES A SOURCE FOR THE FBI.

**SEPTEMBER**

Dias 16



**Valuable understanding of cartels anatomy can be obtained through movies as cartels become unstable without regular meetings**



## Exchange of information

- Exchange of (internal) and sensitive information can establish a cartel rendering it sustainable. Attention has therefore rightfully been allotted to trade organizations and their exchange of information:
  - Trade organizations were involved in 38 out of 94 observed cartels (40%) and 8 out of 48 hardcore cartels (16%)
  - From a practical point, trade organizations and sharing sensitive information appear to be a precondition for the long-term sustainability of cartels



## Exchange of information

- However, it should not preclude (general) conversation within trade organizations or fellow tradesmen. Members can of course meet and engage in conversation relating to their business and concerns



# Exchange of information

Just exercise caution so that you do not share sensitive and internal information or express endorsement of things your company has no real interest in



# Questions

